

SENATE BILL 791

P2

0lr1758

By: **Senator Garagiola**

Introduced and read first time: February 10, 2010

Assigned to: Education, Health, and Environmental Affairs

Committee Report: Favorable

Senate action: Adopted

Read second time: March 23, 2010

CHAPTER _____

1 AN ACT concerning

2 **Procurement – Multi-Year Contracts for Renewable Energy – Termination**
3 **Clauses**

4 FOR the purpose of authorizing the Board of Public Works, on the recommendation of
5 the Secretary of General Services, to waive a certain requirement to include a
6 certain termination clause in certain multi-year contracts for the procurement
7 of energy generated from certain renewable sources; requiring the Board to
8 consider a certain factor in determining whether to grant a certain waiver; and
9 generally relating to the terms of multi-year procurement contracts.

10 BY repealing and reenacting, with amendments,
11 Article – State Finance and Procurement
12 Section 13–217
13 Annotated Code of Maryland
14 (2009 Replacement Volume)

15 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
16 MARYLAND, That the Laws of Maryland read as follows:

17 **Article – State Finance and Procurement**

18 13–217.

19 (a) In this section, “multi-year contract” means a procurement contract that
20 requires appropriations for more than 1 fiscal year.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 (b) (1) A unit may enter into a multi-year contract subject to:

2 (i) standards established by the Board; and

3 (ii) regulations adopted by the primary procurement unit that is
4 responsible for the type of procurement involved.

5 (2) A multi-year contract shall be subject to review and approval by
6 that primary procurement unit.

7 (c) A multi-year contract may not be approved unless each unit reviewing
8 the multi-year contract determines that:

9 (1) the estimated requirements of the State:

10 (i) cover the period of the multi-year contract;

11 (ii) are reasonably firm; and

12 (iii) are continuing; and

13 (2) the multi-year contract will serve the best interests of the State by
14 encouraging effective competition or otherwise promoting economy in State
15 procurement.

16 (d) (1) If money sufficient for the continued performance of a multi-year
17 contract is not appropriated for any fiscal year, the multi-year contract terminates
18 automatically on the earlier of:

19 (i) the last day of the fiscal year for which money last was
20 appropriated; or

21 (ii) the date provided in the termination clause of the
22 procurement contract.

23 (2) If the multi-year contract is terminated under this subsection, the
24 unit shall reimburse the contractor for the reasonable value of any nonrecurring costs
25 that were:

26 (i) incurred as a result of the multi-year contract; but

27 (ii) not amortized in the price of the supplies or services
28 delivered under the multi-year contract.

29 (3) The cost of termination under this subsection may be paid from
30 any appropriation available for that purpose.

1 (e) [Each] EXCEPT AS PROVIDED IN SUBSECTION (F) OF THIS SECTION,
2 EACH multi-year contract, including a lease of real property, shall include an
3 automatic termination clause that:

4 (1) is not inconsistent with the requirements of subsection (d) of this
5 section; and

6 (2) discharges both parties to the multi-year contract from future
7 performance of that contract, but not from their existing obligations.

8 (F) (1) ON THE RECOMMENDATION OF THE SECRETARY OF GENERAL
9 SERVICES, THE BOARD MAY WAIVE THE REQUIREMENT TO INCLUDE AN
10 AUTOMATIC TERMINATION CLAUSE UNDER SUBSECTION (E) OF THIS SECTION
11 FOR A MULTI-YEAR CONTRACT TO PROCURE ENERGY GENERATED FROM A TIER
12 1 RENEWABLE SOURCE OR A TIER 2 RENEWABLE SOURCE, AS DEFINED IN §
13 7-701 OF THE PUBLIC UTILITY COMPANIES ARTICLE.

14 (2) IN DETERMINING WHETHER OR NOT TO GRANT A WAIVER
15 UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE BOARD SHALL CONSIDER
16 THE EFFECT OF IMPOSING THE TERMINATION CLAUSE REQUIREMENT UNDER
17 SUBSECTION (E) OF THIS SECTION ON THE ABILITY OF THE ENERGY SUPPLIER
18 TO OBTAIN FINANCING FOR THE RENEWABLE ENERGY GENERATION PROJECT
19 THAT PRODUCES THE ENERGY THAT THE STATE IS CONTRACTING TO PROCURE.

20 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
21 October 1, 2010.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.